

PROPOSED ORDINANCE NO. 2010-1317

SUMMARY

An ordinance amending Title 3, Revenue and Finance, in the Douglas County Code to add Chapter 3.70, which would be entitled “Transient Lodging License Tax.” The underlying authority is at NRS 244.335(1)(b) and, with certain exemptions, the enactment hereof would impose a license tax based on a percentage of rental rates collected by transient lodging businesses.

TITLE

Ordinance No. 2010-1317 amending Title 3, Revenue and Finance, by adding Chapter 3.70, which would impose a license tax based on a percentage of rental rates collected by transient lodging businesses.

The Board of County Commissioners of the County of Douglas, State of Nevada, does ordain:

Section I: Chapter 3.70 is added to Title 3 as follows:

Chapter 3.70

Proposed Transient Lodging License Tax

Sections:

3.70.010 Authority and purpose.

3.70.020 Definitions.

3.70.030 Amount of transient lodging license tax.

3.70.040 Registers required.

3.70.050 Payment.

3.70.060 Collection of transient lodging license taxes.

3.70.070 Display of Notice.

3.70.080 Collection of delinquent transient lodging license taxes.

3.70.090 Examination and audit of books and records: limitation on period covered by audit; procedure for review of audit.

3.70.100 Exemptions.

3.70.110 Need for and use of funds.

3.70.120 Rules and regulations.

3.70.130 Penalty for violations.

3.70.140 Procedure for challenging underlying Transient Lodging License Tax ordinance or any subsequent ordinance pertinent to this chapter.

3.70.150 Exclusion of certain gross revenue.

3.70.010 Authority and purpose.

This chapter is enacted in accordance with NRS 244.335(1)(b) for the purpose of imposing a transient lodging license tax based on a percentage of transient lodging rental rates collected. The “license tax” created by this chapter is not an “occupancy tax,” which is not included in calculating the rental rates collected. It is based on a percentage of collected transient lodging rental rates for “revenue or for regulation, or for both revenue and regulation.” NRS 244.335(1)(b). (Ord. ____, 2010)

3.70.020 Definitions.

As used in this chapter, the words and terms defined in this section have the meanings ascribed to them unless the context requires otherwise.

A. Transient Lodging Business: A transient lodging business is a person, not exempted by 3.70.090 and as defined at NRS 0.039, who rents transient lodgings situated in Douglas County and includes such person’s employee, agent, representative or broker who rents such lodgings on behalf of the transient lodging business.

B. Transient Lodging: A transient lodging, not exempted by 3.70.090 below, includes, but is not limited to, hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, guest house, motor hotel, guest ranch, ranch resort, guest resort, motel, motor court, mobile home, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin, bed and breakfast inn, inn, house or other premises used for lodging for a period of less than twenty-eight days.

C. Rental rates collected: The consideration received by a transient lodging business in money, credits, property or other consideration valued in money for transient lodgings. Excluded from such rates is any tax on fuel, or on retail sales collected by the transient lodging business, or gratuities . Transient lodging business may not split rents into components such as room rental, TV & VCR rentals, room or unit cleaning or maid service, utility surcharges, mandatory baggage fees, telephone service charges, linen service, credit card surcharges, additional charges for extra guests, pets, power and sewer hook-ups. These types of charges can reasonably be classified as part of the rental rates collected. A complimentary room or transient lodging, as defined below, is not a rental which would trigger the application of this chapter.

D. Transient Lodging License Tax: The transient lodging license tax is three percent (3%) of the rental rates collected by transient lodging businesses separate and apart from any transient occupancy tax.

E. County: Douglas County, State of Nevada.

F. Governing body means the Board of County Commissioners of Douglas County.

G. Recreational facilities means Douglas County Park and Recreation Department beach facilities, wharves, docking accommodations, marinas, jetties, breakwaters, shelters, other boating facilities, playgrounds, swimming pools, aquatic facilities, golf courses, tennis courts, squash courts, other courts, ball fields, other athletic fields, tracks, racecourses, playgrounds, parks, including without limitation, graded, regraded, graveled, surfaced, drained, cultivated and otherwise improved sites therefore, greenhouses, bandstand and orchestra facilities, golf house facilities, club houses, horseshoe pits, ball fields, swings, slides, other playground equipment, stadiums, field houses, rinks, gymnasiums, appurtenant shower, locker and other bathhouse facilities, parking, amusement halls, dance halls, auditoriums, arenas, event facilities, theaters, concert halls, museums, exposition buildings, recreation centers, trails, trailhead, shooting ranges, aviaries, aquariums, zoological gardens, biological gardens and vivariums (or any combination thereof) of the County. (Ord. ____, 2010)

H. Complimentary room means a free room. It is a room or transient lodging provided to a person at no cost. A person provided a complimentary room or transient lodging is not required to pay any cash consideration for any portion of the price therefore.

3.70.030 Amount of transient lodging license tax.

A. Every transient lodging business within Douglas County is assessed a transient lodging license tax effective August 1, 2010. The license tax shall be three percent (3%) of the rental rates collected, separate and apart from any transient occupancy tax. (Ord. ____, 2010)

3.70.040 Registers required.

Every transient lodging business shall keep a register of all persons occupying its transient lodgings. (Ord. ____, 2010)

3.70.050 Payment.

The transient lodging license tax shall become due and payable to the County Treasurer on the first day of each month next succeeding the calendar month or fraction thereof during which such license taxes are accrued, and shall become delinquent if not paid on or before the last day of the same month. Alternatively, if a transient lodging business has 3 or fewer units and is in good standing with Douglas County with no delinquencies within the past twelve months, such business may request to report and pay taxes quarterly. If the request is approved, transient lodging license taxes shall become due and payable to the County Treasurer on the first day of each month next succeeding the calendar quarter or fraction thereof during which such license taxes are accrued and shall become delinquent if not paid on or before the last day of the same month. (Ord. ____, 2010)

3.70.060 Collection of transient lodging license taxes.

A. The Board of County Commissioners of Douglas County or its designee shall act as the County's License Department for the purpose of collecting the proceeds of the transient lodging license tax provided for in this chapter and receive, control, invest and order the lawful expenditure of funds pertaining thereto, and enforce by all appropriate and lawful means the provisions of this chapter.

B. Each transient lodging business shall add the amount of the license tax to the amount of the room rentals due and shall collect the tax and rentals from each vendee, customer or patron and act as trustee therefore. The amount shall be displayed separately from the price of the accommodation or room on the guest registration card or other proof of guest registration. (Ord. _____, 2010)

3.70.070 Display of Notice.

Each transient lodging business shall prominently display in each room or suite of rooms leased as a unit, or at the transient lodging business's option, in a lobby at or in the immediate vicinity of the registration desk for the business, a sign reading substantially as follows:

NOTICE

For each rental of less than 28 days, the business is required by law to collect a 3% transient lodging license tax.

The Management

(Ord. _____, 2010)

3.70.080 Collection of delinquent transient lodging license taxes.

A. To secure collection of delinquent transient lodging taxes under the provisions of this chapter it is provided that:

1. The payment of the transient lodging license tax pertaining to any transient lodging is secured by a lien on the real property where the transient lodging is located;
2. Any such lien securing the payment of a delinquent transient lodging license tax may be enforced in the same manner as liens for general (ad valorem) taxes on real property; and

3. A transient lodging business is liable for the payment of the proceeds of any transient lodging license tax which pertains to such business's taxable premises and which such business failed to remit to the County.

B. If any transient lodging business fails to collect or remit to the County any of the transient lodging license taxes provided for in this chapter, a penalty of ten percent of the amount which was not duly remitted to the County, but in an amount not less than \$10 (ten) dollars, shall be imposed and collected for each calendar month or fraction thereof said transient lodging license taxes are delinquent.

C. The County may bring an action in law or equity in the state district court in Douglas County for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate of one percent a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith, except for any tax being collected by the enforcement of a lien pursuant hereto. (Ord. ____, 2010)

3.70.090 Examination and audit of books and records; limitation on period covered by audit; procedure for review of audit.

A. The Board of County Commissioners or their authorized agent may examine and audit the books, papers and records of any person operating a transient lodging business within the County and make investigations in connection therewith. (Ord. ____, 2010)

B. Any audit of the amount due from the transient lodging business is limited to the 3 complete fiscal years preceding the date of notification of intent to audit, unless there is reason to believe that the transient lodging business has made a fraudulent or material misstatement of its revenue.

C. An audited transient lodging business may obtain a review of the results of an audit performed pursuant hereto. To the extent practicable:

(1) The auditor must disclose the results of the audit to the transient lodging business, discuss any relevant issues that have not previously been resolved and attempt to resolve those issues.

(2) If those issues are not resolved through compliance with paragraph C (1):

(a) Authorize the transient lodging business to prepare documentation of those issues and submit the documentation with a copy of the final audit report to the Douglas County Comptroller's Office; and

(b) Require the Douglas County Comptroller's Office:

(I) Within 7 days after receiving the documentation, to acknowledge that receipt; and

(II) Within 30 days after receiving the documentation, to respond to the transient lodging business regarding those issues.

(3) If those issues are not resolved through compliance with paragraph C (2), within 25 days of the Douglas County Comptroller's Office's decision, require:

(a) The Douglas County Comptroller's Office to submit the documentation to the Douglas County Manager and notify the transient lodging business that the matter is being reviewed by the County Manager; and

(b) The Douglas County Manager, within 60 days after receipt of the documentation by the Douglas County Comptroller's Office, to review the documentation and inform the transient lodging business of the decision regarding the resolution of those issues.

(4) If the transient lodging business is not satisfied with the resolution of those issues pursuant to paragraph C (3), authorize the transient lodging business to appeal the matter to the Douglas County Board of County Commissioners within 25 days from its receipt of the Douglas County Manager's decision.

(5) If the transient lodging business is not satisfied with the resolution of those issues pursuant to paragraph C (4), authorize the transient lodging business, except as otherwise provided in this paragraph, to appeal the matter to the Justice Court within 25 days of the Douglas County Board of County Commissioners' decision. If the amount in controversy exceeds the jurisdiction of the Justice Court, or if the Justice Court makes a determination adverse to the transient lodging business, the transient lodging business may appeal the matter to the District Court within the same time frame of 25 days.

3.70.100 Exemptions.

The transient lodging license tax imposed by this chapter shall not apply:

A. To any person, as defined at NRS 0.039, who rents such lodging for a period of at least twenty-eight consecutive days;

B. If the rent paid for the transient lodging is less than two dollars (\$2.00) a day;

C. To lodging accommodations of religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions, when those lodging accommodations are directly related to the religious, charitable, educational or philanthropic purposes of those institutions;

D. To clinics, hospitals or other medical facilities;

E. To privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill;

F. To lodgings at institutions of the federal government, the state, the county or any public body; or

G. The rental of any lodgings by an employee of the Federal Government, the state or a political subdivision of the state, if the transaction is conducted directly with the governmental entity pursuant to a governmental credit card or a contract purchase order or similar document executed or authorized by an appropriate official of the governmental entity; or

H. To all or any combination of events or conditions provided in paragraphs A to H inclusive. (Ord. ____, 2010)

3.70.110 Need for and use of funds.

The revenue generated hereby will help offset the loss of room tax revenues experienced since the year 2000 and benefit Douglas County's Park and Recreation Department, all to strengthen the economic health of Douglas County by the promotion of tourism. The Board of County Commissioners shall use the proceeds as follows:

A. Of the three percent (3%) transient lodging license tax, one percent (1%) will be used for the benefit of Douglas County. The revenue received will be used to fund the County's economic vitality efforts and to repair, replace, improve, acquire and protect Douglas County's parks, recreation assets and facility reserves adequate to operate safe and functioning parks and recreation facilities and equipment.

B. Of the three percent (3%) transient lodging license tax, the remaining two percent (2%) will be used to strengthen the economic health of Douglas County, both in the Carson Valley and the Lake Tahoe Township, by promoting tourism. Funds collected within the Lake Tahoe Township portion of Douglas County will stay for use in the Lake Tahoe Township and be paid to the Tahoe Douglas Visitors Authority. Funds collected in the East Fork Township will stay for use in the East Fork Township and be paid to the Carson Valley Visitors Authority. All funds collected will be used to increase and support special events and tourism related venues, participate in research, marketing and advertising, support technology driven enhancements in order to grow the tourism economy in Douglas County. (Ord. ____, 2010)

3.70.120 Rules and regulations.

The Board of County Commissioners is authorized and empowered to prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this chapter. The sole intent and purpose of this Chapter and the imposition of the three percent (3%) transient lodging license tax is for the uses identified above in 3.70.100. At no time shall the total combined transient occupancy tax and transient lodging license tax exceed thirteen percent (13%). Any increase by the Legislature in the transient occupancy tax up to three percent (3%) must be offset by an equal decrease in the transient lodging license tax established hereby, with the use of the remaining transient lodging license tax money in accordance with the proportionate one third / two thirds distribution in accordance with 3.70.010 above, , or this Chapter will be null and void.

3.70.130 Penalty for violations.

Any person failing to comply with or violating any provisions of this chapter is guilty of a misdemeanor. (Ord. ____, 2010)

3.70.140 Procedure for challenging underlying Transient Lodging License Tax ordinance or any subsequent ordinance pertinent to this chapter.

A. A business that is aggrieved by the application of this chapter may object to all or a part hereof by filing a petition with the Board through its Clerk within 30 days after the effective date of this Chapter's underlying ordinance. Such petition may be based on the following grounds:

1. The Board failed to prepare a business impact statement as required pursuant to NRS 237.080; or

2. The business impact statement prepared by the Board did not consider or significantly underestimated the economic effect of the rule on businesses.

B. After receiving a petition pursuant to this section, the Board shall determine at a subsequent Board meeting whether the petition has merit. If the Board determines that the petition has merit, it may take action at such meeting to amend the ordinance to which the business objected.

C. Thereafter, such a petitioning person aggrieved by the final decision of the Board must file for judicial review within 25 days after the conclusion of such meeting.

D. Any other person aggrieved by this chapter must file for judicial review within 25 days from the effective date of this Chapter's underlying ordinance.

E. This procedure is also on file with the Clerk of the Board and available upon request. (Ord.____, 2010)

3.70.150 Exclusion of certain gross revenue.

A. Excluded from the rental rates collected is any tax on fuel or on retail sales collected by the transient lodging business. Such business is required to maintain adequate accounting records and supporting documentation for determining the relevant sums.

Adopted this _____ day of _____, 2010, by the following vote:

Vote: Ayes: Commissioners _____

 Nays: Commissioners _____

 Absent: Commissioners _____

Michael A. Olson, Chair
Douglas County Board of Commissioners

Attest:

Ted Thran, Clerk

This Ordinance is effective on the 1st day of August, 2010.